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7590 03/09/2009 NIXON & VANDERHYTE P.C. 11th Floor 901 North Glebe Road Arlington, VA 22203-1808				
EXAMINER				
CHAWLA, JYOTI				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## **DETAILED ACTION**

### ***CONTINUATION OF PTOL 303 ADVISORY ACTION***

*Continuation of item 11, PTOL 303:*

Applicant's arguments filed February 23, 2009, with respect to claims 1-2, 4-6 and 12 have been fully considered but have not been found persuasive and they do not place the application in condition for allowance because:

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Regarding the applicability of the individual references, the applicant is referred to the rejection in the previous office actions.

Applicant's argument that the reference can not be combined as Scott precludes non-ionic surfactants" (Remarks, Page 2, last paragraph) The applicant also states that "Scott is not limited to the surfactant that gives the best result" (Remarks, Page 2, lines 17-18). In addition applicant quotes Scott "Scott clearly states that its latexes are "prepared by emulsion polymerization of vinylidene chloride and acrylonitrile..." Column 2, lines 21-22...Scott states this may be a "conventional emulsion polymerization procedure" (Page 2, last 2 paragraphs). Based on these facts applicant suggests that "Scott can not be taken to reasonably suggest all types of surfactants" (Remarks, page 2, last line to page 3, line 1) The applicant further states that "Scott...but is also not so broad as to encompass the surfactants that are typically avoided" (Page 2, lines 18-19).

In response, the applicant is reminded that claims 1 and 12 recite "coating composition comprising", i.e., the composition can have other components besides the components claimed. The applicant is then referred to Scott (Column 2, lines 41-42 and 53-58) where Scott clearly teaches of forming a dispersion of monomer in water with "water

dispersible emulsifying agent...After polymerization...to stabilize the freshly prepared latex to storage and mechanical shear by incorporating a small amount of additional surface active agent into the latex". Regarding the argument about the polymerization process (Remarks Page 2, last 2 paragraphs) Scott clearly states that "The latexes may be prepared by any conventional emulsion polymerization procedure" (Column 2, lines 36-37). Scott neither states "that non-ionic surfactants can not be used" nor teaches that non-ionic surfactants are "surfactants that are typically avoided" as alleged by the applicant (Page 2, specifically see lines 18-19). Thus, applicant's argument that Scott teaches against using non-ionic surfactants, has not been found persuasive.

Regarding other references, applicant is referred that Nisperos teaches food coating composition with Polysorbate and lecithin as surface-active agents or emulsifiers used in the composition (Column 3, line 64 to Column 4, line 15), which are non-ionic surfactants. Liu teaches of a coating composition for pineapple crowns, i.e., fruits, wherein the emulsifier used in the protective coating composition includes octylphenol ethoxylates under the name Triton-X® and polysorbate under the name Tween® (Column 3, line 67 to Column 4, line 2). Thus, non-ionic as well as anionic emulsifiers including Triton-X and Tween and lecithin were used as surfactants or emulsifiers in the art of food coating at the time of the invention. Therefore, one of ordinary skill at the time of the invention would have been motivated to modify Scott to include specific surfactants, such as, Polysorbate 80 (as taught by Nisperos) or Tween® or Triton-X® (as taught by Liu), in order to have an emulsifier that is water soluble (as taught by Scott) and makes a suitable coating composition that can be applied to fruits as an aqueous suspension. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use any surfactant or emulsifier, such as, Triton-X® (octylphenol ethoxylate), Tween® (Polysorbate) in the composition as disclosed by Scott, depending on which of the emulsifying agents were more readily available and affordable at the time the invention was made. One of ordinary skill would have been further motivated to do so in order to have an emulsifier or stabilizer that is non-toxic and edible and thus is safe to be added to foods.

Regarding the rejection over Scott and Lee, Lee teaches seed (i.e., food) coating composition with polyvinylidene halide copolymers (Column 4, lines 20-43 and Column 9, lines 35-40), and non-ionic surfactants such as octylphenoxy polyethoxy ethanols (Column 6, lines 15-45). Lee also teaches of Triton-N® which is described as nonylphenoxy polyethoxy ethanol, i.e., nonylphenoxy ethoxylate as instantly claimed, in Examples 10-13 and 35. Thus, octylphenol ethoxylates and nonylphenol ethoxylates were used as surfactants or emulsifiers in the art of food coating at the time of the invention. Therefore, one of ordinary skill at the time of the invention would have been motivated to modify the surfactant taught by Scott to another surfactant, such as, octylphenol ethoxylates and nonylphenol ethoxylates (as taught by Lee), in order to have an emulsifier that is highly water soluble and to make a suitable coating composition that can be applied to foods as an aqueous suspension. One of ordinary skill would have been further motivated to do so in order to have an emulsifier or stabilizer that is non-toxic and edible and thus is safe to be added to foods. Applicant has presented no new arguments regarding Bice and Yang.

Applicant has included a new reference, which is a section from a book called "Principles of Polymerization". Applicant relies on the statement that "Anionic surfactants are the most commonly used surfactants in emulsion polymerization .... Nonionic surfactants are only infrequently used alone, since their efficiency in producing stable emulsions is less than that of the anionic surfactants" (Remarks, Page 3, lines 3-7), which raises a new issue of use and effectiveness of non-ionic surfactants which was not discussed in the previous office actions and therefore, requires new search and consideration. Applicant's remarks about the "incompatibility of materials" is also a new issue and a new argument (Remarks, page 3, last paragraph), which was not disclosed by the applicant in the prosecution before and therefore, requires further search and/or consideration.

Thus, applicant's request for reconsideration has been considered , but applicant's argument regarding the references have not been found persuasive and claims 1, 2, 4-6 and 12 remain rejected for reasons of record.

*Continuation of item 13 of PTOL 303:*

Other: The affidavit or other evidence filed after the final action, but before or on the date of filing a Notice of Appeal will not be entered because it raises new issues for search and/or consideration (See response to item 11, above).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTI CHAWLA whose telephone number is (571)272-8212. The examiner can normally be reached on 9:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on (571) 272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JC/  
Examiner  
Art Unit 1794

/JENNIFER MCNEIL/  
Supervisory Patent Examiner, Art Unit 1794